

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LAMONT ROY REED,

Defendant-Appellant.

UNPUBLISHED

May 6, 2003

No. 234451

Macomb Circuit Court

LC No. 99-003051-FC

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his conviction for armed robbery, MCL 750.529, for which he was sentenced to 42 to 120 months' imprisonment. We affirm.

Defendant challenges the trial court's finding of guilty but mentally ill of armed robbery for two reasons. Defendant first argues that the trial judge applied the wrong burden of proof for proving the affirmative defense of insanity. Defendant asserts that the trial judge applied the beyond a reasonable doubt standard rather than the correct preponderance of the evidence standard. We review de novo the application of the correct standard of review. *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001).

There is no evidence that the trial court failed to apply the correct burden of proof to defendant's claim of insanity. The record is replete with references to the correct burden of proof. Defense counsel advised the court of the correct burden in his closing argument. The trial court acknowledged that it applied the preponderance of the evidence standard in its decision. Therefore reversal is not required.

Defendant next argues that he met his burden of proving insanity by a preponderance of the evidence at trial. We disagree. We review the trial court's findings of fact for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991); MCR 2.613(C).

The requirements for proving an affirmative defense of insanity are set out in MCL 768.21a(1):

It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the

offense. An individual is legally insane if, as a result of mental illness as defined in [MCL 330.1400a]¹, or as a result of being mentally retarded as defined in [MCL 330.1500], that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

The prosecution conceded that defendant was mentally ill at the time of the robbery. It is only the second prong of the insanity test that is at issue.

Although some evidence supports defendant's claim of insanity, it was insufficient to outweigh the evidence to the contrary. Although defendant experienced an extreme change in behavior after witnessing a murder in December 1998 and was repeatedly hospitalized for his mental state, the prosecution's expert testified there was insufficient evidence to find that defendant was legally insane. In the opinion of the prosecution's expert, defendant's use of deception to trick the cashier into opening the cash drawer and his use of a knife were important facts that illustrated that defendant did not meet the second prong of the insanity test. Moreover, defendant's own expert witness did not conclude that defendant met both prongs of the insanity defense, finding the relationship between defendant's particular mental illness and the resulting behavior to be tenuous at best.

The evidence taken in its entirety supports the trial court's decision. After a review of the entire record the evidence does not create a definite and firm conviction a mistake was made. We find that the decision was not clearly erroneous. *Gistover, supra* at 46.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper

¹ MCL 330.1400a was repealed by 1995 PA 290.